



**YOUNG WORKERS CENTRE SUBMISSION**  
**Inquiry into Penalty Rates and Fair Pay**  
**MAY 2017**

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## **ABOUT THE YOUNG WORKERS CENTRE**

The Young Workers Centre, based in Trades Hall, was established in 2016 to break the cycles of exploitation at work for young Victorians. We educate young people on their rights, safety and wellbeing at work via training programs available to all Victorian high schools, TAFEs and technical colleges. We provide free legal advice to young people to resolve workplace issues. We organise and train young people to develop campaigns to improve their workplaces. We document life at work through our young workers research project.

## **OUR VISION**

A state in which young people are safe at work, do not suffer harassment or bullying, and are provided their legal entitlements. For this vision to be realised, we must encourage young people to speak up without fear and join with other young workers to make change and improve their workplaces and communities.

## EXECUTIVE SUMMARY

The Fair Work Commission's decision to cut penalty rates will have a hugely detrimental impact on the thousands of young Victorians who start their working lives in jobs in the retail, fast food and hospitality industries. This decision, along with a labour market environment where wage theft has become normalised for young and vulnerable workers, demonstrates that Australia's rich history of workers rights and high living standards are being actively undermined.

This decision has been informed by anti-worker views from employer groups who have argued that reducing penalty rates will boost employment rates or hours available.<sup>1</sup> By framing cuts to penalty rates as solutions to unemployment and underemployment, employer groups have said to workers: you must take a pay cut if you want your out-of-work mate to get some hours. Pitting worker against worker in this way ignores the joint role of business, government and civil society in creating more decent jobs, as well as business' capacity to pay as evident in the record growth in the Victorian retail and hospitality industries. From 2013 to 2015 alone, retail and hospitality spending in Melbourne grew by 16% to \$3.03 billion.<sup>2</sup>

The decision to cut penalty rates in the Retail, Hospitality, Fast Food, Pharmacy and Restaurant Awards disproportionately affects young people as they are highly represented in these industries. More than 147,000 young Victorians work in the retail trade and accommodation and food services industries. Young workers aged 15-24 make up 31.5% of retail workers and a staggering 42.1% of accommodation and food services workers in Victoria.<sup>3</sup>

We therefore welcome the opportunity to present to the inquiry the real and personal economic and social impact and cost of the Fair Work Commission's decision to cut penalty rates to thousands of Victorian Workers in relation to terms of reference:

- (i) Victoria's lowest paid, award reliant workers;
- (iii) Young workers;

This submission illustrates the impact and cost in two sections.

### PART A: THE IMPACT OF WORKING WEEKENDS AND CUTS TO PENALTY RATES

For the month of April we asked young people to tell their stories: what working on the weekends means to them, and how the cut to penalty rates will affect them. Sixty-seven people shared their stories, which form the basis of Part A of our submission.

We found there is overwhelming support for maintaining existing penalty rates for hours worked on Sundays and public holidays. Young people who work these unsociable hours say they rely

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<sup>1</sup> Fair Work Commission 2017, *4 yearly review of modern awards – Penalty rates [AM2014/305]* Chapter 6.3 Employment effects of changes to penalty rates. <https://www.fwc.gov.au/>

<sup>2</sup> Victorian State Government and City of Melbourne 2016, *Melbourne Retail and Hospitality Strategy 2013-2017: Year 3 report 2015-16*. <http://www.melbourne.vic.gov.au/SiteCollectionDocuments/melbourne-retail-hospitality-strategy-report-2015-16.pdf>

<sup>3</sup> Australian Bureau of Statistics 2011, Census of Population and Housing.

on this monetary compensation to pay for housing, food and bills, and to make up for missed birthdays, celebrations and family events that occur during these hours. When asked if they would continue to work these unsociable hours on reduced penalty rates, many reluctantly said they would, as they couldn't afford not to.

## **PART B: PENALTY RATE VIOLATIONS AND WAGE THEFT ARE RIFE**

The parallel story that has been missing from public debate around penalty rates is employer non-compliance with wage laws. Penalty rate violations are part of a wider problem of wage theft that is rife across Victoria. Large numbers of young people are simply not being paid penalty rates for their work during unsociable hours, and there appears to be no repercussions for employers who breach wage laws.

The Young Workers Centre's recent report **The Great Wage Rip-Off** highlights gross non-compliance with wage laws by employers. The report, based on a survey of more than 1000 young Victorian Workers, found that a massive 3 in 4 young employees worked unsociable hours: nights, weekends or public holidays, however less than half were paid penalty rates for that work. These penalty rate violations are detailed in this submission and the report **The Great Wage Rip-Off** is available in full as an appendix.

For further discussion of the social and economic impact of cuts to penalty rates to women workers and all Victorian workers, please refer to the Victorian Trades Hall Council submission.

## **PART A:**

### **THE IMPACT OF WORKING WEEKENDS AND CUTS TO PENALTY RATES**

#### **YOUNG PEOPLE MAKE SACRIFICES FOR WORKING ON THE WEEKENDS**

Young people routinely talked about the significance and value of weekends and public holidays: 18<sup>th</sup> and 21<sup>st</sup> birthday celebrations weddings, hens and bucks nights, family occasions and social events all take place on weekends. Young people who work on weekends and public holidays are making irreversible sacrifices, including to their mental health, when they miss these social connections and important milestones.

**Does working on the weekend or public holidays mean you miss other activities?**

Yes - especially around Christmas time. My family live in Sydney and I am in Melbourne. Working in retail means that I haven't been back for Christmas in 5 years.

Dali, 23, Retail

Yes, always! If I'm not studying then I'm at work making up for the wages I miss out on as a student who can't work full-time. Having a social life is important for ones mental health, sustaining relationships and also networking for your future career.

Jess, 22, Retail

It means I don't really get any down time from having uni work throughout the week.

Corey, 20, Retail

I generally organise catch-ups in my friendship groups, and it can be frustrating to find that Saturday night suits everyone else perfectly...but I'm working.

Kelly, 23, Hospitality

Yes, my partner works Mon-Fri so we never have a day off together... It makes maintaining friendships very challenging.

Liz, 28, Retail

## YOUNG PEOPLE NEED PENALTY RATE MONEY TO PAY THE RENT

We asked young people how they spend their income derived from penalty rates. The top 4 answers: rent, bills, food, and if they're lucky, some savings for a rainy day. Not one young worker talked of lattes or avocado smash.

How do you spend the penalty rate money you earn?

Rent, Bills, living expenses.

Phoebe, 23, Hospitality

That's usually my bills and food for the week, I'm renting so the rest of my week's earnings goes straight to my landlord.

Jess, 22, Retail

My penalty rate money goes toward bills.

Brooke, 23, Retail

I try to save it, as a student I don't get much Centrelink assistance so these penalty rates will go towards saving for future bills and unexpected expenses.

Katherine, 19, Retail

I'm saving almost all of my money to buy a house right now, all the left over goes on petrol, bills and food.

Claire, 23, Hospitality

## YOUNG PEOPLE WILL NEED TO WORK MORE FOR LESS MONEY, OR GO WITHOUT

Life after penalty rate cuts: less money, more hours, more debt, going without. These are the realities of life for young workers after the penalty rate cuts take effect. Young people who can't fit more hours into their already busy schedules say they'll be borrowing money or going into debt for necessities like textbooks or even medication. Others say they'll squeeze in more hours to stay afloat.

### How will a cut to penalty rates affect you?

It will make it harder to afford stuff like textbooks that are required for my studies. Those textbooks cost upwards of \$300 every semester, so the extra money from weekends & public holidays is really useful in being able to afford those. With hours being so tight in retail, without penalty rates, I know I would struggle financially.

Ash, 20, Retail

I'm going to lose at least \$50 a week meaning I'll struggle to pay rent, eat or maintain a social life.

Kate, 21 Retail

It would mean I would have to work more which means either less study or getting rid of the one day off I have a week which would have an effect on my mental health.

Corey, 20, Retail

Much less socialising with both friends and family, plus working extra hours will lessen my time for my studies. I have various medications for long-term conditions, and I've already started trying to stretch them out to last longer.

Anonymous, 25, Retail

It would massively effect my ability to balance my studies and my part time work, as I would need to work more hours to maintain the basic income I currently earn.

Phoebe, 23, Hospitality

## YOUNG PEOPLE HAVE LITTLE CHOICE BUT TO WORK FOR LESS

Young people juggling study and work often have little choice but to work unsociable hours. Although they will be negatively impacted by the cut to penalty rates, many say they have no choice but to work weekends as classes are scheduled during the week.

Will you still work Sundays or public holidays after the cuts to penalty rates are introduced?

Yes, I don't have a choice of whether or not I can work those days, I just need the money  
Corey, 20, Retail

Likely yes, out of desperation.  
Bartholomew, 20, Retail

Yes because I have to work weekends because I'm a student and I need the money  
Mary-Anne, 21, Retail

Unless my employment hinged on it, and I would lose my job otherwise, no. I've missed a lot of family events and such because I have to work, and that has been okay because the money is rewarding.  
Ash, 20, Retail

I'd have to take what I could get but I think retail in particular it wouldn't be worth putting up with endless rude and disrespectful customers for a lower rate.  
Katherine, 19, Retail



## YOUNG PEOPLE ARE NOT CONVINCED CUTS WILL BOOST EMPLOYMENT

Young people are sceptical that the cut to penalty rates will boost employment. When asked, the perception amongst most young people is that money saved from penalty rates will be absorbed by employers as profit.

What do you think your boss will do with the money they save from paying lower penalty rates?

My boss has already made it clear we don't need any more staff. It's going straight into the company's pockets.

Anonymous, 25, Retail

I don't know, but I doubt it would come back to benefit us. It'll end up in someone's pocket, probably someone already earning plenty.

Ash, 20, Retail

Keep it for themselves. We've already had store hours and job cuts since it was announced.

Kate, 21, Retail

I would assume it would go to the overall profits of the business.

Bartholomew, 20, Retail

Probably give it to the CEO or Executives, definitely not hire anyone else.

Mary-Anne, 21, Retail

## Further comments on penalty rates

We're already underpaid.

I'm an Assistant Manager, and the award in retail for that is pretty lousy considering all the work we do.

I can't afford to move out of home on my wage.

If hospitality and retail workers didn't sacrifice our Sundays and Public Holidays to work, no one could enjoy restaurants, shops, etc on their days off.

We should be respected, because without us, you couldn't spend your Boxing Day shopping or your Sunday having lunch with friends.

We work hard, and we're already paid stuff all.

Ash, 20, Retail

If the people cutting penalty rates don't want to work weekends or public holidays without some kind of incentive, what the hell makes them think we do?

Brooke, 23, Retail

When I leave the industry for graduate work, my opinion will still be the same.

Hospitality and retail staff bear the brunt of a lot of customer angst and stress during these times.

They are often juggling full-time study and other activities while trying to make ends meet, and miss out on vital rest time for their mental health.

They deserve compensation.

Kelly, 23, Hospitality

## PART 2: PENALTY RATE VIOLATIONS AND WAGE THEFT ARE RIFE

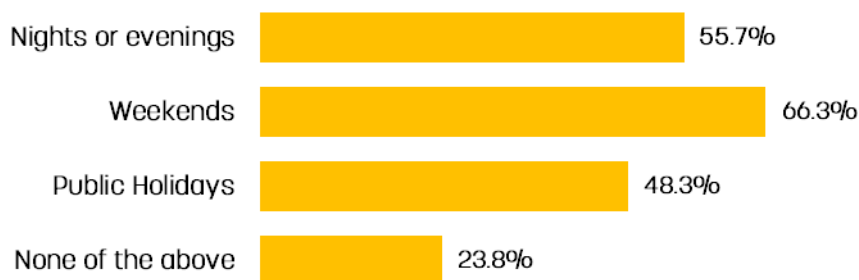
Despite being enshrined in most modern Awards, young workers report penalty rates are frequently ignored by employers. Despite performing late night, weekend and public holiday work, many young workers report payment of penalty rates as compensation for working those unsociable hours simply doesn't happen. Public debate around penalty rates has largely focused on legislation alone, and ignored the question of employer compliance with wage laws on the ground.

The Young Workers Centre's recent snapshot report **The Great Wage Rip-Off** highlights gross non-compliance with wage laws by Victorian employers, particularly regarding payment of penalty rates. The report, based on a survey of more than 1000 young workers, is available in full as an appendix to this submission.

### YOUNG PEOPLE ARE WORKING UNSOCIALABLE HOURS...

We found that 3 in 4 (75.8%) young Victorians surveyed are working unsociable hours: nights, weekends or public holidays<sup>4</sup>.

#### DO YOU WORK AT THE FOLLOWING TIMES?



### ...BUT THEY'RE NOT GETTING PAID THEIR PENALTY RATES

Of those who work unsociable hours, less than half (45.9%) reported being paid penalty rates for that work. More than 4 in 10 (42.9%) reported that they did not receive penalty rates.<sup>5</sup>

#### DO YOU RECEIVE PENALTY RATES FOR THAT WORK?



<sup>4</sup> Analysis was conducted of the 953 young workers classified as employees. Workers were asked the multiple choice question 'Do you work at the following times?' in relation to their current main job, or their most recent job if not currently working. 950 responded.

<sup>5</sup> Analysis was conducted on the 723 young workers classified as employees who worked unsociable hours (nights, weekends, public holidays). Partial monetary compensation includes respondents who reported some but not full financial compensation eg 'sometimes', 'weekends yes but public holidays no'. Time in lieu includes respondents who reported they received time off for working unsociable hours.

Young people reported

- penalty rates were treated as optional by their employers
- that there appeared to be no repercussions for employers who did not pay, and thus no disincentives against committing this wage theft violation
- payment of penalty rates would vary between employees doing the same job in the same workplace: some received them, some simply did not.

[We get] 50c for working past midnight but no penalty rates.

Female, 19, cashier

Past jobs have been horrific compared to [my current job], yet I get paid more here. Fairwork should have the authority to give criminal charges as this is the only job I know to respect workers legal rights.

Female, 23, Consumer consultant

Within one of my jobs, every worker gets paid a different rate. I get paid \$23 FLAT RATE (no penalties) an hour, whereas specific workers get \$25 an hour WITH penalty rates as well as raised rates on Saturdays, Sundays AND any weekday AFTER 9.

Female, 19, bartender

Penalty rate violations are part of a wider problem of wage theft that is rife across Victoria. Large numbers of young people are simply not being paid penalty rates for their work during unsociable hours, and there appears to be no repercussions.

See Appendix: **The Great Wage Rip-Off** for further reading on penalty rate violations and other forms of wage theft.

## RECOMMENDATIONS

The Young Workers Centre makes the following recommendations regarding the cut to penalty rates. These recommendations also address penalty rate pay violations as part of a wider strategy to address wage theft.

1. That the Victorian Government continue to advocate to the federal government to legislate to protect penalty rates for all workers in Victoria and interstate;
2. That the Victorian Government continue to lobby employers in Victoria to protect penalty rates and not implement a wage reduction as a result of the Fair Work Commission ruling;
3. That the Victorian Government include a *full penalty rates guarantee* requirement in its tendering process to ensure that any companies or parents companies who tender for government contracts agree to pay their workers full penalty rates at the percentage rates prior to the cuts announced in February 2017.
4. That the Victorian Government mandate work rights and safety training in high school career and work-readiness programs and curriculum in all Victorian high schools for students Year 10 and above. This early education at the point at which young workers are entering the workplace for the first time is pivotal to ensure they have an understanding of wage laws and penalty rate entitlements under modern Awards.
5. That the Victorian Government advocate for payslip content reform at a federal level. In order to improve worker and employer knowledge about wage rates and reduce information barriers between the two, Regulation 3.46(2)(b) of the Fair Work Act 2009 should be amended to require that the following additional information be specified on a payslip:
  - The employee's industrial instrument inclusive of the relevant Award or agreement name
  - The classification applicable to the employee under the industrial instrument (i.e. 'retail employee level 1').
6. That the Victorian Government advocate for increased penalties under the Fair Work Act for employers who contravene national minimum wage orders of modern Awards. Existing penalties are not high enough to deter illegal behaviour.
7. That the Victorian Government advocate for the adoption of enforcement methods by regulators that are driven by proactive investigation (rather than solely complaint responsive). For this to be successful and protect vulnerable or low-wage workers, such investigations and audits must be unannounced to employers but well publicised once they have been carried out. Violators should be vigorously prosecuted.
8. That the Victorian Government support the introduction of criminal sanctions for employers and company directors responsible for wage theft. Sanctions should be commensurate with those faced in other theft cases, or cases involving breach of the corporations law, such as recording criminal convictions, bans on company directorship

or the operation of a business for a period of time, or even jail sentences. Breaches should be recorded on a public register and should impact upon a business' right to tender for or win government contracts.

9. That the Victorian Government create, or support the creation of, an online platform that allows workers to report and rate employer compliance with wage laws to allow workers and consumers to make informed decisions about where to work and shop, driving improvements to employer compliance. Like the popular platforms Trip Advisor and Glassdoor (where users rate their experience with a company as recruitment candidates or employees), this tool would similarly elevate the power of individual stories and voices to impact an employers' practices and thereby their commercial reputation.

## REFERENCES

Australian Bureau of Statistics 2011, Census of Population and Housing.

Fair Work Commission 2017, *4 yearly review of modern awards – Penalty rates [AM2014/305]*  
Chapter 6.3 Employment effects of changes to penalty rates. <https://www.fwc.gov.au/>

Victorian State Government and City of Melbourne 2016, *Melbourne Retail and Hospitality Strategy 2013-2017: Year 3 report 2015-16*.  
<http://www.melbourne.vic.gov.au/SiteCollectionDocuments/melbourne-retail-hospitality-strategy-report-2015-16.pdf>

## **APPENDIX: YOUNG WORKERS SNAPSHOT: THE GREAT WAGE RIP-OFF**



# **YOUNG WORKERS SNAPSHOT: THE GREAT WAGE RIP-OFF**



# ABOUT THE YOUNG WORKERS CENTRE

The Young Workers Centre was established by the Victorian Trades Hall Council in 2016 to break the cycles of exploitation at work for young Victorians. We educate young people across Victoria on their rights, safety and wellbeing at work. We provide free legal advice and assistance on workplace issues. We organise and train young people to develop campaigns to improve their workplaces. We collect data and undertake research to advocate for young workers.

Our vision is a state in which young people are safe at work, do not suffer harassment or bullying, and are provided their legal entitlements. For this vision to be realised, we must encourage young people to speak up without fear and join with other young workers to make change and improve their workplaces and communities.

## YOUNG WORKERS RESEARCH PROJECT

The Young Workers Research Project documents life at work for young Victorians. We collect data through state-wide surveys and our legal and education programs. We interview young people about their experiences at work. This snapshot draws upon case study interviews with young workers and data collected from the 2016 Young Workers survey. The 2016 Young Workers survey was an open access internet based survey conducted over five weeks between 20 July and 23 August 2016. The survey collected 1,028 responses. The survey was open to Victorians aged 15-30 who are currently working or have previously worked (paid or unpaid). The survey collected data on safety, pay and conditions at work. For further details, see the Young Workers Survey Data appendix.

Other publications in this series include *Young Workers Health & Safety Snapshot*.

## WE ACKNOWLEDGE

The 1000+ young Victorians who have shared their stories with us through interviews and surveys.

UCLA Labor Studies Centre *#I am a Young Worker* and *Wage Theft and Workplace Violations* research projects which we have drawn on in producing this snapshot

## GLOSSARY

**MINIMUM WAGE VIOLATIONS:** Employers setting base pay rates that are below minimum wages set by minimum wage orders or relevant modern Awards.

**PENALTY RATE VIOLATIONS:** Employers failing to pay higher hourly rates set in Awards for work performed during unsociable hours (nights, weekends, public holidays).

**OFF-THE-CLOCK VIOLATIONS:** Work performed before or after a shift for which workers are not paid.

**CASH-IN-HAND VIOLATIONS:** Work performed off the books without legally required documentation such as payslips and Fair Work compliant employment contracts between both parties. It frequently involves flat pay rates that may not meet minimum wage and Award wage levels, and there are typically no provisions for superannuation, penalty rates, income tax or workers compensation.

This report was prepared by Sarah Bright, Keelia Fitzpatrick, and Amy Fitzgerald of the Young Workers Centre.



# INTRODUCTION

## AUSTRALIA A WORKERS UTOPIA NO MORE

Australia is a country that is celebrated for its rich history of workers' rights and high standard of living. We have one of the highest minimum wages in the world and relatively low levels of unemployment. Not too long ago, we were seen as a 'workers utopia' and the envy of the world.

Cut to 2017, and each week Australians are hit with news of a scandal involving a different well known and loved company underpaying their workers. These repeated scandals are not isolated cases of "bad apple" employers, they reflect the lived reality of those workers affected and tens of thousands of others who experience wage theft. A large number of those workers affected are young people.

## YOUNG PEOPLE ARE ENTERING A WORLD OF WORK RIFE WITH WAGE THEFT VIOLATIONS

Entering the world of work is a significant milestone for thousands of young Victorians each and every year. It can be a positive experience and a unique opportunity for young people to gain confidence, develop their interpersonal skills and have their first taste of financial independence.

Unfortunately for many a first job is memorable for the wrong reasons. The findings of this research report show that many young people's first job experiences are damaged by employers who fail to pay their workers for their hours worked in accordance with legal rates prescribed in modern Awards and national minimum wage orders. This is wage theft and is the result of employer decisions not to pay minimum legal wage rates for hours worked.

## 1 IN 5 YOUNG WORKERS PAID AT RATES THAT UNDERCUT THE MINIMUM WAGE

Analysis shows that 1 in 5 young workers are paid at base rates below the national minimum wage order. Shockingly, more than half of those underpaid workers said they believe they are paid minimum wage. When we take into account the higher minimum rates workers receive under relevant modern Awards the underpayment rates and dollars stolen skyrocket.

Young people are entering the workforce without knowledge of their rights and entitlements and thus assume that what employers offer accurately reflects what they're legally entitled to. In the absence of strict penalties and disincentives, bad employers frequently operate outside the Fair Work Act by choosing to arbitrarily set their own pay rates that undercut the minimum wage and modern Awards. This snapshot illustrates these stories and outlines keys recommendations to ensure these young workers' stories no longer remain the status quo.



# KEY FINDINGS

1.

## **YOUNG PEOPLE BEGIN THEIR WORKING LIVES WITH A POOR UNDERSTANDING OF THEIR RIGHTS AND ENTITLEMENTS UNDER EMPLOYMENT AND INDUSTRIAL LAW FRAMEWORKS**

Young workers are developing knowledge and expectations of their rights based on what employers offer rather than their actual legal entitlements. This frequently leaves young workers blind to their own exploitation, as their illegal pay rates appear normal when compared with their peers who are equally underpaid. There are low levels of knowledge about the minimum wage, payslips and the information they should contain, and the implications of working 'cash-in-hand'.

2.

## **WAGE VIOLATIONS ARE RIFE ACROSS INDUSTRIES**

Minimum wage violations are rampant across workplaces in Victoria. Many employers pay hourly rates that do not meet minimum pay rates for relevant adult and junior minimum wage rates set annually by the Fair Work Commission. Employers are paying illegal and inconsistent rates, at times even paying different rates to workers with identical jobs in the same workplace. Illegal pay rates were frequently reported to be much lower for migrant workers. This represents not only an undercutting of the minimum wage and modern Awards, but an undermining of those instruments as floors for wages and conditions for Australian workers.

3.

## **LARGE NUMBERS OF YOUNG PEOPLE WORK WEEKENDS AND ARE NOT PAID PENALTY RATES**

Despite being enshrined in most modern Awards, young workers report penalty rates are frequently ignored by employers. Despite performing late night, weekend and public holiday work, many young workers report payment of penalty rates as compensation for working those unsociable hours simply doesn't happen.

4.

## **WAGE THEFT IS A LOW RISK BUSINESS DECISION FOR EMPLOYERS**

Wage violations are the result of employer decisions. The systemic nature of wage violations in Australia today suggests that the repercussions are low risk and can be ignored in this decision making. There is no 'carrot' to provide incentives to 'good' employers and no 'stick' to punish the 'bad' employers. Existing legal and regulatory structures in place to enforce employee rights and to prevent violations are failing to ensure employment standards are being upheld.



## YOUNG WORKERS SNAPSHOT



# THE GREAT WAGE RIP-OFF

## 1. MINIMUM WAGE VIOLATIONS

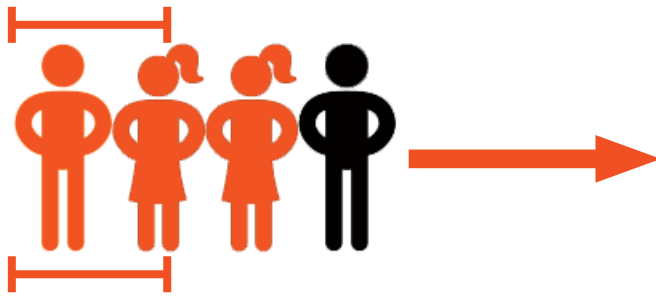


1 IN 5 YOUNG WORKERS AREN'T PAID MINIMUM WAGE...

...and they're losing an average of **\$3.12 PER HOUR**

## 2. PENALTY RATE VIOLATIONS

3 IN 4 WORK UNSOCIABLE HOURS SUCH AS NIGHTS, WEEKENDS, AND EVENINGS



but less than  
**HALF**  
are being paid  
**PENALTY RATES**  
for their work

## 3. UNPAID TRIALS & WORKING OFF THE CLOCK



1 IN 5 HAVE WORKED UNPAID TRIALS TO GET THEIR FOOT IN THE DOOR

and 1 in 2 have experienced **OFF-THE-CLOCK PAY VIOLATIONS**, such as working early or late without payment



"I know I have rights at work but because there are so few jobs going for young people it seems better for me to ignore small violations to keep a job and get a good reference"

*Female, 23, Legal Intern*

"My boss predominantly hires inexperienced and younger staff so he can underpay and mistreat them as they don't know their rights as employees"

*Female, 23, Waitress*

**MORE: [YOUNGWORKERS.ORG.AU](http://YOUNGWORKERS.ORG.AU)**

# JASMIN, HOSPITALITY WORKER



Jasmin came to Melbourne from country Victoria to study after high school. They worked multiple hospitality jobs to pay the rent while finishing their degree. Jasmin experienced all that hospitality has to offer: minimum wage violations, non-existent penalty rates, off the clock violations, and cash-in-hand pay violations. It was during Jasmin's last hospo job in a popular trendy cafe in Melbourne's Brunswick that they spoke up about their pay violations.

## **\$20 an hour flat rate, no penalties**

"At the start the manager said 'we pay all our staff \$20 an hour'. We didn't get public holiday pay ever, we didn't get weekend pay. We were usually told to stay back late. This is at a cafe where the average meal cost about \$27, plus coffee on top of that. We had pressure to upsell all the time and I realised upselling was just making them more and more money and we were losing out."

"The thing that kind of twigged it for me was seeing how much money the cafe was making every day and knowing how little we were paid. Seeing the boss rock up in his expensive car...while all the people I work with are struggling to make ends meet and juggling multiple jobs - it's just not fair."

## **Repercussions for not attending 'optional' unpaid staff meetings**

"We had 'optional' unpaid staff meetings that you had to go to. Everyone was rostered on to come to these meetings. A couple of us missed one because we were only told a few days before, and then we were

asked to stay back for 4 hours on Easter Sunday to have this meeting. They gave us a glass of wine so apparently that made it square. I didn't want wine, I had to drive. I had family in town for Easter that I wanted to see."

## **Public holiday surcharges for customers were pocketed by the boss**

"The cafe charged customers a public holiday surcharge that they didn't pass on to us [workers]. Customers would come in and say 'oh you must be making a packet today.' A customer told me how much I was supposed to be paid for public holidays. I knew it was time to actually do something about this."

"I saw a poster for the Young Workers Centre while I was at the comedy festival at Trades Hall. I took a photo and a few weeks later decided it was time to do something. We finalised a letter of demand and sent that through and I got backpaid."

## **Jasmin was told "don't rock the boat"**

"When I told people I was [pursuing my backpayments] with the Young Workers Centre so many people around me told me not to do it. I kept hearing over and over again: 'don't rock the boat'."

"Some people would say 'we're a family, not a business, I'm sure it's a mistake'. It's a business, and we're the ones getting exploited. You don't make a mistake this big without it being on purpose. You don't make a mistake that you benefit from this much. It's not a mistake anymore."

1. Most Hospitality workers are covered by the Hospitality Industry (General) Award 2010 or the Restaurant Industry Award 2010. Pay rates for a casual Level 2 food & beverage attendant start at \$23.64/hour on weekdays, and range from \$28.37 - \$33.09 on weekends and \$47.28 - \$52.00 on public holidays.

“

*“The cafe charged customers a public holiday surcharge that they didn’t pass on to us [workers]”*

”

# MINIMUM WAGE VIOLATIONS

## 1 IN 5 YOUNG WORKERS ARE NOT PAID THE MINIMUM WAGE

We compared young workers reported base pay rates with legal minimum base pay rates and identified almost 1 in 5 young workers (19.7%) are not paid the minimum wage they're entitled to.<sup>2</sup>



## KNOWLEDGE GAP: 1 IN 2 UNDERPAID YOUNG WORKERS THINK THEY'RE PAID MINIMUM WAGE. THEY'RE NOT

Young workers were asked whether they believe they are paid the minimum wage. More than 1 in 2 (56.8%) of the young workers we identified as underpaid reported that they believe they are paid the minimum wage. This represents a huge failing in the education of young workers about their employment rights and entitlements.



These underpayment rates and dollar figures are conservative. Most young people are working under Awards or Agreements that provide pay rates higher than the minimum wage, meaning underpayment rates would increase as would the dollar figure of those underpayments.

*See Retail Award wage analysis example on page 9.*

2. Analysis was conducted on the minimum wages of the 953 young workers classified as employees. Workers were asked 'how much are you paid per hour as your base rate?' in relation to their current main job, or their most recent job if not currently working. 891 responded. Analysis compared their reported base pay rates with the 2016 minimum wage order, taking into account the following factors:

- Junior rates based on age reported in survey period July-August 2016
- Casual loading where workers reported a casual employment relationship.



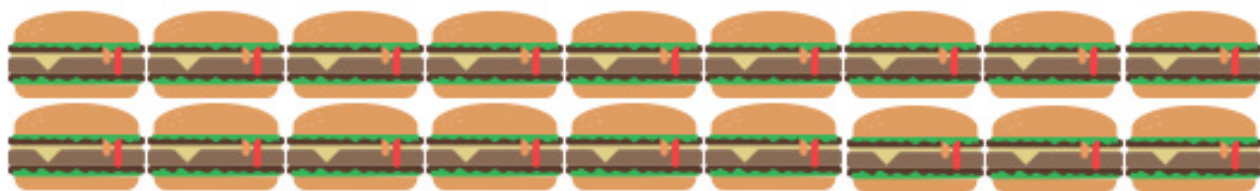
# UNDERPAID WORKERS HAVE THE EQUIVALENT OF A CHEESEBURGER STOLEN EACH AND EVERY HOUR

## **-\$3.12 PER HOUR**

Underpaid workers are losing an average of \$3.12 per hour, roughly the price of a cheeseburger. Individual minimum wage violation amounts varied from a few cents per hour up to \$16.61 per hour.

## **-\$59.02 PER WEEK<sup>3</sup>**

Underpaid employees are losing an average of \$59.02 per week. Individual weekly underpayment amounts varied from a few dollars to over \$400 per week. **That's 18 cheeseburgers stolen per week!**



## WHAT YOUNG WORKERS SAID

"I just want to say that tips represent at least 50% of what I earn. But for tips, I would not even earn award rates."

*Male, 24,  
food and beverage attendant*

"My boss left for Sydney and I can't get in touch with him and he hasn't paid me for a lot of work which I can't get back"

*Male, 20, labourer*

"I was spruiking for a marketing company without a wage. I just worked for commission had to work for about 12 hours. On my last job as a waitress I was paid \$15 per hour"

*Female, 25, waitress*

"My work doesn't know the rules on pay"

*Female, 18, pizza chef*

"[I] have previous experience with cafe work that paid casual work at the part time rate, but didn't give any of the benefits (e.g. no leave, no fixed shifts or guaranteed hours). I didn't stay there long, we all knew it was happening but no one wanted to speak up and many staff were international students who might not have known the right pay"

*Female, 26, tutor*

3. Analysis was conducted by asking young workers how many hours they work in an average week in their current main job (or most recent job if not working) to calculate individual weekly underpayments. The average weekly underpayment was calculated from individual weekly underpayment figures.

# MINIMUM WAGE VIOLATIONS: SPOTLIGHT ON RETAIL

## 1 IN 5 YOUNG RETAIL WORKERS ARE NOT PAID MINIMUM WAGE UNDER THE RETAIL AWARD

We compared young retail workers reported base pay rates with the legal minimum pay rates under the Retail Award and identified over 1 in 3 young retail workers (36.89%) are not paid the minimum wage they're entitled to.<sup>4</sup>



## KNOWLEDGE GAP: ALMOST 3 IN 4 UNDERPAID YOUNG RETAIL WORKERS THINK THEY'RE PAID MINIMUM WAGE. THEY'RE NOT.

Young workers were asked whether they believe they are paid the minimum wage. Almost 3 in 4 (73.9%) of the retail workers identified as underpaid reported that they believe they are paid the minimum wage. This represents a huge failing in the education of young workers about their employment rights and entitlements.



These underpayment rates and dollar figures are conservative. People working under employee classifications higher than Retail Employee Level 1 would be awarded higher rates of pay, meaning underpayment rates would increase as would the dollar figures of those underpayments.

4. Analysis was conducted on the minimum wages of the 220 young workers in retail classified as employees. Workers were asked 'how much are you paid per hour as your base rate?' in relation to their current main job, or their most recent job if not currently working. Analysis compared their reported base pay rates with the Retail Award (General) 2010 Retail Employee Level 1, taking into account the following factors:

- Junior rates based on age reported in survey period July-August 2016
- Casual loading where workers reported a casual employment relationship.

# ON AVERAGE, UNDERPAID RETAIL WORKERS LOSE:


## -\$1.77 PER HOUR

Underpaid retail employees are losing an average of \$1.77 per hour. Individual underpayment amounts varied from a few cents per hour up to \$9.30 per hour.

## -\$32.16 PER WEEK<sup>5</sup>

Underpaid employees are losing an average of \$32.16 per week. Individual weekly underpayment amounts varied from a few dollars to over \$300 per week.

## WHAT YOUNG WORKERS SAID



"At age 18 I got paid \$11.50 which went up to \$12.50 when I turned 19 and recently just went up to \$15. We also do not get pay slips"

*Female, 19, sales assistant*

"I've previously been asked to work for \$12 an hour only 14 months ago by a franchise"

*Female, 26, retail assistant*

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5. Analysis was conducted by asking young workers how many hours they work in an average week in their current main job (or most recent job if not working) to calculate individual weekly underpayments. The average weekly underpayment was calculated from individual weekly underpayment figures

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### WHY RETAIL?

We have highlighted underpayments under an Award as they provide for higher rates of pay than the absolute minimum wage.

We chose to highlight retail award underpayments as Retail Award coverage and Retail Industry employment classification are most easily matched, not because retail employees are underpaid at higher rates than workers in other industries.

Our survey asked young people to choose the industry of their main current job (or most recent job) based on the Australian & New Zealand Industry Codes (ANZIC). As Industrial Award coverage is not aligned to ANZIC industry classifications, analysis of whole industries is difficult without additional information to determine Award coverage for each worker.

For example, a young person who identifies working in the Accommodation and Food services industry (ANZIC classification) could be covered by the Fast Food Award, Hospitality or Restaurant Award, making generalised pay rate analysis for those workers difficult based on current survey data.

We are aware of wage theft across all industries and strongly encourage further research into underpayments for young workers working under other Awards.

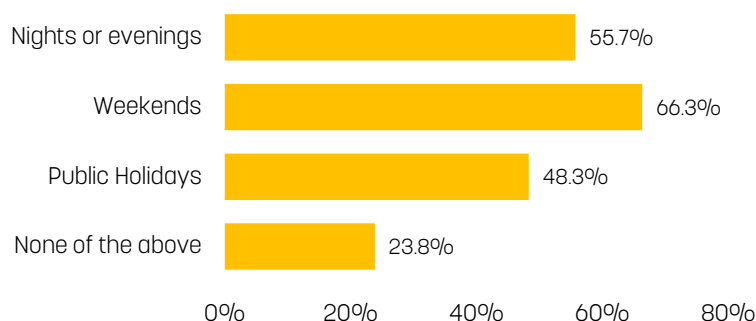
# PENALTY RATES TREATED AS OPTIONAL

## YOUNG PEOPLE ARE WORKING UNSOCIALABLE HOURS...

3 in 4 surveyed (75.8%) said they work unsociable hours, including nights, weekends or public holidays.<sup>6</sup>



### DO YOU WORK AT THE FOLLOWING TIMES?

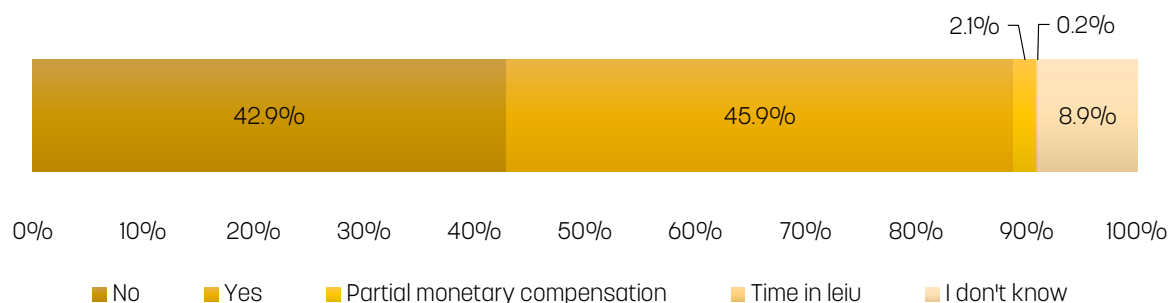


Note: this question was multiple choice.

## ...BUT THEY'RE NOT GETTING PAID THEIR PENALTY RATES

Of those who work unsociable hours, less than half (45.9%) reported being paid penalty rates for their work during those unsociable hours. More than 4 in 10 (42.9%) reported that they did not receive penalty rates.<sup>7</sup>

### DO YOU RECEIVE PENALTY RATES FOR THAT WORK?



6. Analysis was conducted of the 953 young workers classified as employees. Workers were asked the multiple choice question 'Do you work at the following times?' in relation to their current main job, or their most recent job if not currently working. 950 responded.

7. Analysis was conducted on the 723 young workers classified as employees who worked unsociable hours (nights, weekends, public holidays). Partial monetary compensation includes respondents who reported some but not full financial compensation eg 'sometimes', 'weekends yes but public holidays no'. Time in lieu includes respondents who reported they received time off for working unsociable hours.



# WHAT YOUNG WORKERS SAID

"[We get] 50c for working past midnight but no penalty rates"

*Female, 19, cashier*

"I am concerned about the proposed changes to penalty rates. If they are abolished, I would have to work more hours to earn enough to survive, which would cut into the time I have for full time study."

*Male, 24, bicycle salesperson/mechanic*

"Within one of my jobs, every worker gets paid a different rate. I get paid \$23 FLAT RATE (no penalties) an hour, whereas specific workers get \$25 an hour WITH penalty rates as well as raised rates on Saturdays, Sundays AND any weekday AFTER 9"

*Female, 19, bartender*

"[It] often feels like head office are resentful at us since they started paying us penalty rates."

*Female, 23, cook*

# SOFIA: RETAIL & HOSPITALITY WORKER

## INTERNATIONAL STUDENT



Sofia came to Melbourne as an international student in 2008. She's since made a life in Australia: she holds a post-graduate degree, is married to an Australian, and is awaiting permanent residency. Life should be pretty good for Sofia, however her international student and now temporary visa status have relegated her to the underclass of migrant workers who keep Melbourne shops and restaurants in profit.

### **\$5 an hour in retail...**

"I had \$5 per hour when it was 2009 [as] a shop assistant in the CBD. All the effort you put in, it's just so not worth the pay. You have to wear a full face of makeup, wear high heels and wear their kind of puffy dress cos it's a costume shop."

### **...with deductions for not wearing heels**

"[If you didn't wear the heels] they deduct your pay. I know that's illegal, and the thing is as an international student sometimes that's the only thing you get. I think in the beginning I actually got warnings like "Oh Sofia, why don't you wear heels?" "Well I'm mopping the floor, how do I wear heels?" All the girls would just do whatever the boss says. You don't want to have your shifts cut."

### **Life as a waitress: unpaid trials and \$9 per hour**

"Later on I worked for waitressing jobs. Even last year I was a waitress and again, at this dodgy Asian Restaurant. Pretty bad pay. They have this unpaid training period... usually 1 or 2 days....then

they would be like "oh yeah, maybe I will hire you." Of course when they hire you the hours are never as good as the training hours. That was like.... \$7 per hour up to \$9 an hour."

"[It's] pretty common among those restaurants on Swanston St. Even the ones in the fancier places like Emporium. So my friends talk, international students talk, we know that's the shitty rate you get."

### **Cash-in-hand and wage theft the norm for international students**

"It's totally illegal, like under the table kind of cash-in-hand payment, despite the fact that back when I was on a student visa the visa says you can work legally here for 20 hours a week. The thing is most places don't want to hire you. They're like "oh international students, we don't want the trouble, we don't want the paperwork", despite how many times you tell them "hey, this visa says I can work legally here."

"So in the end the only jobs you normally get when you're an international student is waitressing or like sales assistant but in those dodgy shops and they give you really bad rates."

"We know it's absolutely bullshit...but in the end we kind of accepted the fact that if you don't do the jobs, and if you want a job as an international student, you don't get hired by other people, so in the end you go back to that. So, it's kind of a sad reality."

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*\$7 per hour, \$9 per hour... it's pretty common among those restaurants on Swanston St. Even the ones in the fancier places like Emporium.*

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# THE BLACK ECONOMY: CASH IN HAND

4 in 10 young people surveyed (39.91%) say they have worked off the books for 'cash-in-hand' pay<sup>8</sup>



## YOUNG WORKERS FORCED TO WORK OFF THE BOOKS

When asked what led to the decision to work cash in hand, young workers cited:

- Their employer preferred it
- It was their only option
- It was so common that it seemed normal
- They were young and unaware of the implications
- Visa restrictions
- Centrelink restrictions

### WHY CASH IN HAND MATTERS

Off the books or 'cash in hand' employment typically involves flat rates of pay without penalty rates, overtime, casual loading or sick leave and annual leave, training and superannuation. Employers who hire people off the books may not pay into workers compensation funds for those workers. This results in employers shifting their health and safety obligations onto workers and taxpayers who are left to foot the bill either privately or through Medicare if workers are injured at work. The absence of payslips, group certificates and other documentation can leave young workers exposed to tax and other liabilities. Without income records young workers can struggle to prove their income in rental applications or to obtain house or car loans.

## WHAT YOUNG WORKERS SAID

"I was only 15 and I didn't know I was entitled to more than that"

*Female, 19, cashier*

"Visa restrictions for international students"

*Male, 27, supervisor*

"Not much choice, worked at five different restaurants and all of them paid cash in hand."

*Female, 21, waiter*

"I had no choice. I was forced to work off the books. I didn't really know the difference until I applied for a home loan and had no real record of employment"

*Male, 28, electrician*

8. Analysis was conducted of the 999 young workers who completed the survey. Workers were asked the question "Have you worked off the books for 'cash in hand'?" during their working life. 989 responded.



# UNPAID WORK & 'OFF THE CLOCK' WORK VIOLATIONS

## YOUNG WORKERS STRUGGLE TO GET JOBS WITHOUT WORKING FOR FREE

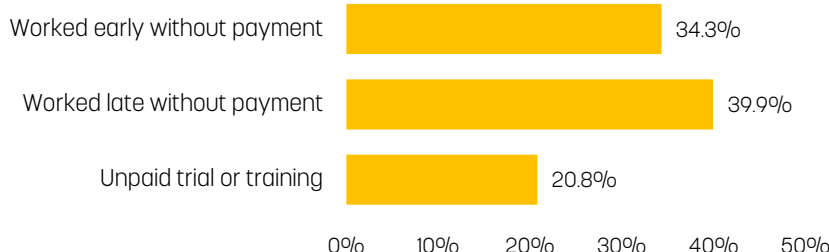
More than 1 in 5 (20.8%) of young workers reported they worked a trial or training shift or period they were not paid for during their working lives.<sup>9</sup>



## 'OFF THE CLOCK' VIOLATIONS ARE COMMON PLACE

Almost 1 in 2 young workers (49.0%) reported they had experienced 'off the clock' work violations during their working lives. More than 3 in 10 (34.3%) reported working early without payment. Almost 4 in 10 (39.9%) reported working late without payment.

### HAVE YOU WORKED DURING THE FOLLOWING TIMES?



## WHAT YOUNG WORKERS SAID

"Unpaid trials are the worst. I worked 12 hours without pay"

*Female, 22, waitress*

"Working as a young person generally I have been exploited whether it be getting paid less, not having clear idea of my rights, being asked to do extra work for free, undertaking multiple roles for the same amount of money"

9. Analysis was conducted of the 999 young workers who completed the survey. Workers were asked the multiple choice question 'Have you worked any of the following without payment?' during their working life so far.

# RECOMMENDATIONS

## 1. EDUCATION FOR HIGH SCHOOL STUDENTS

Workplace rights and safety training must be embedded in high school career and work-readiness programs and curriculum and mandated in all Victorian high schools for students Year 10 and above. This early education at the point at which young workers are entering the workplace for the first time is pivotal in ensuring they have an understanding of how the minimum wage and National Employment Standards, Awards and enterprise agreements apply to them, allowing them to better enforce the pay rates they are legally entitled to.

## 2. CHANGE THE LAW ON PAYSLEIPS

In order to improve worker and employer knowledge about wage rates and reduce information barriers between the two, payslip content reform is necessary. Regulation 3.46(2)(b) of the Fair Work Act 2009 should be amended to require that the following additional information must be specified on a payslip:

- The employee's industrial instrument inclusive of the relevant Award or agreement name
- The classification applicable to the employee under the industrial instrument (i.e. 'retail employee level 1').

## 3. STRENGTHEN CIVIL PENALTIES FOR NON-COMPLIANCE WITH WAGE LAWS

Existing penalties under the Fair Work Act for contraventions of a national minimum wage order or a modern award are not high enough to deter illegal behaviour. The savings employers derive from non-compliance with wage laws outweigh the costs that may arise from the current civil penalties in the Fair Work Act 2009 for such breaches. Employers are not being deterred from choosing to pay below legal rates under the current penalties structure and in order to arrest the trend of non-compliance, the penalties must be increased with this purpose in mind.

## **4. IMPROVE ENFORCEMENT IN LOW-WAGE & YOUNG WORKER INDUSTRIES**

Increasing the efficacy of penalties is meaningless without efforts to ensure violations are being identified and prosecuted in the first place. Regulators should adopt enforcement methods that are driven by proactive investigation (rather than solely complaint responsive). These methods should apply to Industries that are low-wage, populated with high numbers of vulnerable workers or are otherwise acknowledged as having wage law compliance issues. For this to be successful and protect vulnerable workers, such investigations and audits must be unannounced to employers but well publicised once they have been carried out. Violators should be vigorously prosecuted.

Not-for-profit actors such as community legal centres, trade unions and other community-based advocates play a vital role in supporting the legal rights of young and vulnerable workers. Pursuing underpayments through legal avenues is highly resource intensive, even for relatively low monetary amounts. Organisations doing this work on a not-for-profit basis must be adequately compensated for securing stolen wages for workers. Compensation should be funded by those employers as an additional penalty for their breaches of the Fair Work Act.

## **5. INTRODUCTION OF CRIMINAL SANCTIONS**

In addition to the civil penalty regime, employers and company directors should be held criminally responsible for wage theft. If an employee steals from their business they can be held criminally liable - but employers are not held to the same standard. Sanctions should be commensurate with those faced in other theft cases, or cases involving breach of the corporations law, such as recording criminal convictions, bans on company directorship or the operation of a business for a period of time, or even jail sentences. Breaches should be recorded on a public register and should impact upon a business' right to tender for or win government contracts.

## **6. AN ONLINE PLATFORM TO REPORT WAGE VIOLATORS**

Young workers should be able to access public information about employers who decide not to pay minimum wages before they start working for them. The creation of an online platform that allows workers to report and rate employer compliance with wage laws will allow workers and consumers to make informed decisions about where to work and shop, driving improvements to employer compliance. Like the popular platforms Trip Advisor and Glassdoor (where users rate their experience with a company as recruitment candidates or employees), this tool would similarly elevate the power of individual stories and voices to impact an employers' practices and thereby their commercial reputation.



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[www.youngworkers.org.au](http://www.youngworkers.org.au)

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